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VOLUME 8

ETHICS AND PROFESSIONAL RESPONSIBILITY

CHAPTER 8-1: OVERVIEW

8-1.0 KEY TERMS

“DAEO” means Designated Agency Ethics Official.

“Department” means Department of Justice.

“Director” means Director of the Executive Office for U.S. Trustees, unless otherwise indicated.

“EOUST” means Executive Office for U.S. Trustees.

“Program” means U.S. Trustee Program, unless otherwise indicated.

8-1.1 GENERAL

As a component of the Department, the Program and its staff must adhere to all laws, rules, and regulations that are meant to ensure impartiality; avoid conflicts of interest, including conflicts of financial interest; and maintain the integrity of the laws and regulations that the Department enforces. This volume discusses the laws, rules, and regulations governing the activities of employees of the Program, both while carrying out official and assigned duties and while engaged in outside activities that are not part of an employee’s official duties.

8-1.2 STATUTES AND REGULATIONS

There are a number of laws and regulations that generally govern the activities of employees of the Program. They include the following:

1. Conflict of Interest Statutes, 18 U.S.C. §§ 201-209;
2. Regulatory Code of Conduct, Executive Order 12674 (1989), modified by Executive Order 12731 (1990);
3. Procurement Integrity Restrictions, 41 U.S.C. § 423;
4. Executive Branch Standards of Conduct, 5 C.F.R. § 2635;

5. Department of Justice Supplemental Standards of Conduct, 5 C.F.R. § 3801;
6. Financial Disclosure Regulations, 5 C.F.R. § 2634;
7. Post-Employment Regulations, 5 C.F.R. § 2637;
8. Training Regulations, 5 C.F.R. § 2638;
9. Internal Operating Procedures, DOJ Order 1200.1; and
10. Executive Order 13490 (2009), “Ethics Pledge.”

8-1.3 DESIGNATED AGENCY ETHICS OFFICIAL

The Designated Agency Ethics Official (DAEO) for the Department is the Assistant Attorney General for Administration. The Deputy DAEO for the Program is the Deputy Director/General Counsel.

8-1.4 DISQUALIFICATION IN PARTICULAR MATTERS

8-1.4.1 General Rule

An employee should not participate in a particular matter involving specific parties: (1) where the employee knows that the matter will have a direct and predictable effect on the financial interest of a member of his or her household or where he or she knows a person with whom there is a “covered relationship” is, or represents a party to such a matter; and (2) where a reasonable person with knowledge of the relevant facts would question the employee’s impartiality in the matter. 5 C.F.R. § 2635 subpart E.

A covered relationship includes one involving:

1. someone with whom the employee has or seeks a business, contractual, or other financial relationship other than a routine consumer transaction;
2. a member of the employee’s household;
3. a relative with whom the employee has a close personal relationship;
4. an organization with whom the employee’s spouse, parent, or dependent child is, or is seeking to be, an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;

5. an organization for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; or
6. an organization, other than a political party, in which the employee is an active participant.

8-1.4.2 Motions for Recusal or Disqualification

An employee may disqualify himself or herself. A written disqualification is not required, but is recommended. The disqualification should continue for a reasonable time after the relationship terminates. A reasonable time is usually one year, unless a longer period appears appropriate.

An employee may also seek prior written authorization from the Deputy DAEO to participate in the matter. A determination will be made as to whether the interest of the Program outweighs the appearance of a conflict considering the nature of the relationship, the nature and importance of the employee's role, the sensitivity of the matter, and the difficulty of reassigning it.

CHAPTER 8-2: CONFLICTS OF FINANCIAL INTEREST

8-2.1 GENERAL

Employees may not participate personally and substantially in any particular matter in which they have a financial interest if the matter will have a direct and predictable effect on their financial interests. 18 U.S.C. § 208(a). The financial interests of the employee include those of:

1. the employee's spouse, minor child, or general partner;
2. an organization in which the employee is an officer, director, trustee, general partner, or employee; or
3. anyone the employee is negotiating with for future employment.

8-2.2 EXCEPTIONS AND REMEDIES

An automatic exception exists for interests in diversified mutual funds, certain employee benefit plans, and total interests in publicly traded securities that do not exceed \$15,000 when participating in a matter having parties, and \$25,000

(\$50,000 for all affected interests) when participating in a matter of general applicability.

An individual waiver may be granted by the Director if the interest is found not to be so substantial as to affect the employee's services. This takes into account factors such as the employee's position, job duties, etc. The employee must give full disclosure and receive a written determination in advance of participation. All requests for individual waivers must be submitted to the Deputy DAEO for transmission to the Director for formal decision. See DOJ Order 1200.1, Ch. 11-1.C.1. Instead of seeking a waiver, an employee may simply disqualify himself or herself by not participating. A written disqualification is not required, but it is advisable. An employee may also sell or divest a disqualifying interest or resign from a disqualifying position. The employee may obtain a tax deferral on gains from sales made to prevent a conflict of interest. 26 U.S.C. § 1043.

CHAPTER 8-3: DEPARTMENT OF JUSTICE STANDARDS OF CONDUCT

The Executive Branch Standards of Conduct, found at 5 C.F.R. § 2635 have been supplemented by the Department of Justice Supplemental Standards of Conduct, 5 C.F.R. §3801.

CHAPTER 8-4: POLITICAL ACTIVITIES AND HATCH ACT

The Hatch Act, 5 U.S.C. §§ 7321-26, governs the participation of most employees in partisan political activities. An election is partisan if any candidate is running as a representative of a political party whose presidential candidate received electoral votes in the last presidential election. The Attorney General has imposed more restrictive requirements on career members of the Senior Executive Service (SES), employees of the Criminal Division and the Federal Bureau of Investigation (FBI), and political appointees, e.g., the United States Trustees.

All employees may register and vote; contribute money; sign petitions; attend political events, including fund-raisers; assist in non-partisan voter registration drives; join political clubs or parties; express political views; and display political stickers and buttons.

All employees in the Department, with the exception of political appointees (e.g., the United States Trustees), career SES employees, and employees of the Criminal

Division and the FBI, may prepare and distribute campaign literature, campaign for a candidate in a partisan election, participate in political rallies, make political speeches, hold office in political clubs or parties, and be candidates in nonpartisan elections. (In certain communities, including Washington, D.C., and its suburbs, an employee may run as an independent candidate in a local partisan election and receive, but not solicit, contributions.)

Employees may not:

1. use their official authority or influence to interfere with or affect the result of an election, 5 U.S.C. § 7323(a)(1);
2. solicit, accept, or receive a political contribution, 5 U.S.C. § 7323(a)(2); solicit, accept, or receive uncompensated volunteer service from an individual who is a subordinate, 5 C.F.R. § 734.303(d); or allow their official titles to be used in connection with fund-raising activities, 5 C.F.R. § 734.303(c);
3. run for nomination or election to public office in a partisan election, 5 U.S.C. § 7323(a)(3);
4. solicit or discourage the political activity of any person who is a participant in any matter before the Department, 5 U.S.C. § 7323(a)(4);
5. engage in political activity (to include wearing political buttons) while on duty, while in a government-occupied office or building, while wearing an official uniform or insignia, or while using a government vehicle, 5 U.S.C. § 7324(a); or
6. make a political contribution to their employer or employing authority, 18 U.S.C. § 603.

In addition, political appointees, such as the United States Trustees, career members of the SES, and employees in the Criminal Division and FBI, may not:

1. distribute fliers printed by a candidate's campaign committee, a political party, or a partisan political group;
2. serve as an officer of a political party; a member of a national, state, or local committee of a political party; or an officer or member of a committee of a partisan political group; or be a candidate for any of these positions;

3. organize or reorganize a political party organization or partisan political group;
4. serve as a delegate, alternate, or proxy to a political party convention;
5. address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is done in concert with such a candidate, political party, or partisan political group;
6. organize, sell tickets to, promote, or actively participate in a fund-raising activity of a candidate for partisan political office or of a political party or partisan political group;
7. canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, political party, or partisan political group;
8. endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with such a candidate, political party, or partisan political group;
9. initiate or circulate a partisan nominating petition;
10. act as recorder, watcher, challenger, or similar officer at polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office; or
11. drive voters to polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.

CHAPTER 8-5: ETHICS PLEDGE FOR UNITED STATES TRUSTEES
EXECUTIVE ORDER 13490

8-5.1 GENERAL

Executive Order 13490 requires that political appointees sign an Ethics Pledge. The Pledge requires recusal for certain matters and imposes additional restrictions

on the acceptance of gifts. United States Trustees are “Term Appointees” for purposes of the Ethics Pledge. Although all United States Trustees who had been appointed before the date of Executive Order 13490 were not required to sign the Ethics Pledge, all United States Trustees reappointed thereafter will be required to sign the Ethics Pledge. United States Trustees are also advised by the Office of Government Ethics to nonetheless abide by the terms of the Ethics Pledge while serving in their appointed position.

8-5.2

RESTRICTION ON ACCEPTANCE OF GIFTS

This section will address the rules governing the acceptance of gifts from outside sources, set forth in 5 C.F.R. § 2635 subpart B, as well as the additional restrictions on the acceptance of gifts, imposed by Executive Order 13490. A further discussion of the restrictions on the acceptance of gifts from outside sources, and the acceptance and receiving of gifts by and between employees within the Program, is set forth in Manual 8-6.9.

An employee may not accept gifts from a prohibited source, which includes anyone who: (1) has or seeks business with the Department; (2) is regulated by the Department; (3) has interests that may be affected by the employee’s official actions; or (4) is an organization a majority of whose members are described in the three preceding categories. 5 C.F.R. § 2635.202-203.

An employee is also prohibited from accepting a gift given because of his or her official position. 5 C.F.R. § 2635.202.

A political appointee is prohibited from accepting gifts from a registered lobbyist or lobbying organization. Many law firms are registered lobbying organizations. Executive Order 13490.

There are some exceptions to these restrictions including gifts of \$20 or less per occasion and a total of \$50 annually from one source. This exception, however, is **not available** to political appointees for gifts from a registered lobbyist or lobbying organization, **unless** the source is a charitable or other nonprofit organization exempt from taxation under 26 U.S.C. § 501(c)(3) or a media organization, **and** the individual offering the gift or extending the invitation is not himself or herself a registered lobbyist. Gifts based on a personal relationship are also excepted from the restrictions. In addition, discounts and similar benefits offered to a broad category of the public such as reduced membership fees are excepted from the restrictions as long as there is no discrimination based on grade. Awards, other than cash, for meritorious public service, of \$200 or less are also excepted. Awards above this amount or in cash may be accepted with written

approval. This exception is ***not available*** to political appointees for gifts from a registered lobbyist or lobbying organization, ***unless*** the source is a charitable or other nonprofit organization exempt from taxation under 26 U.S.C. § 501(c)(3) or a media organization, ***and*** the individual offering the gift or extending the invitation is not himself or herself a registered lobbyist.

Another exception to the restrictions on the acceptance of gifts from outside sources is honorary degrees with approval in writing. This exception is ***not available*** to political appointees for gifts from a registered lobbyist or lobbying organization, ***unless*** the source is a charitable or other nonprofit organization exempt from taxation under 26 U.S.C. § 501(c)(3) or a media organization, ***and*** the individual offering the gift or extending the invitation is not himself or herself a registered lobbyist.

Gifts based on outside business relationships, including those resulting from a spouse's business, and trips paid for by a prospective employer are excepted. However, this exception for a gift resulting from a government employee's own outside business or employment activities is ***not available*** to political appointees for gifts from a registered lobbyist or lobbying organization ***unless*** the source is a charitable or other nonprofit organization exempt from taxation under 26 U.S.C. § 501(c)(3) or a media organization, ***and*** the individual offering the gift or extending the invitation is not himself or herself a registered lobbyist.

Widely attended gatherings and speaking engagements also have certain applicable exceptions. When an employee's attendance will further agency programs, he or she may accept free attendance, food, or materials, generally only on the day of any presentation to be given, from the sponsor of: (i) a gathering of members of an industry or profession; or (ii) a conference or seminar where the employee is a speaker or on a panel. If the cost of the employee's attendance is not provided by the sponsor of the event, 100 or more persons must be expected to attend and the cost of the gift must not exceed \$335. Approval must be in writing when the organization is one that may be affected by the employee's performance of his duties. **Political appointees** may accept free attendance, food, or materials on the day they are serving as a speaker or on a panel; however, ***appointees otherwise may not be approved*** to accept attendance at widely attended gathering events if the gift is from a registered lobbyist or lobbying organization, ***unless*** the source is a charitable or other nonprofit organization exempt from taxation under 26 U.S.C. § 501(c)(3) or a media organization, ***and*** the individual offering the gift or extending the invitation is not himself or herself a registered lobbyist.

Food and refreshments are also excepted from the gift restrictions, if they are provided at a social event from someone who is not a prohibited source and no fee is charged to anyone in attendance, even if the employee was invited to the social

event because of his or her official position. This exception is ***not available*** to political appointees for gifts from a registered lobbyist or lobbying organization, ***unless*** the source is a charitable or other nonprofit organization exempt from taxation under 26 U.S.C. § 501(c)(3) or a media organization, ***and*** the individual offering the gift or extending the invitation is not himself or herself a registered lobbyist.

Gifts from foreign governments up to \$335 are also excepted. See 5 U.S.C. § 7342.

Meals and entertainment in a limited amount in foreign areas from persons other than a foreign government where attendance will further Department programs or operations are also excepted from the gift restrictions. This exception is ***not available*** to political appointees for gifts from a registered lobbyist or lobbying organization, ***unless*** the source is a charitable or other nonprofit organization exempt from taxation under 26 U.S.C. § 501(c)(3) or a media organization, ***and*** the individual offering the gift or extending the invitation is not himself or herself a registered lobbyist.

Notwithstanding the above noted exceptions, an employee may not accept: (1) gifts from the same or different sources on a basis so frequent that it would appear to be misuse of public office; and (2) a gift that is solicited or coerced. ***Excluded from the definition of a gift*** are modest amounts of food and refreshments such as coffee and donuts not offered as part of a meal, greeting cards and plaques, favorable rates and commercial discounts, and rewards and prizes in contests or events open to the public. Even though acceptance of a gift may be permitted by an exception, it is frequently prudent to decline.

The restrictions that apply to all Program employees regarding the acceptance of gifts from outside sources can be found at 5 U.S.C. § 2635 subpart B. For a more detailed discussion of the provisions of Executive Order 13490 addressing the restrictions on the acceptance of gifts by political appointees, refer to the Office of Government Ethics [DAEOgram DO-09-010](#), dated March 16, 2009.

8-5.3

GUIDANCE ON RECUSAL PROVISIONS

The Ethics Pledge imposes a number of recusal obligations, which are in addition to the recusals required by the financial conflict of interest statute, 18 U.S.C. § 208, and the standard of conduct on impartiality, 5 CFR § 2635.501 *et seq.* These **recusals run for a period of two years from the date of appointment.** An

appointee is recused from participating in any particular matter with specific parties that is directly and substantially related to his former employer or former client, including regulations and contracts.

Directly and substantially related means matters in which the appointee's former employer or former client is a party or represents a party.

Particular matter with specific parties typically involves a specific proceeding affecting the legal rights of the parties or an isolated transaction or related set of transactions between identified parties, such as a specific contract, enforcement action, administrative adjudication, or court case. It also includes regulations and contracts, as well as any **meeting** or **communication** relating to the performance of one's official duties with a former employer or former client, **unless** the communication concerns a matter of general applicability or a non-particular matter **and** is open to all interested parties.

Former employer includes anyone the appointee served, within two years prior to appointment, as employee, officer, director, trustee, or general partner; **former client** is anyone the official served personally as an agent, attorney or consultant, within two years prior to appointment. Note: governmental entities are excluded from this restriction. A client of an appointee's former firm whom the appointee did not personally serve as agent, attorney, or consultant is not the appointee's former client.

For a more detailed discussion of the recusal provisions of Executive Order 13490, refer to the Office of Government Ethics [DAEOgram DO-09-011](#), dated March 26, 2009.

CHAPTER 8-6: OTHER RESTRICTIONS ON CONDUCT

8-6.1

PRO BONO AND VOLUNTEER SERVICES POLICY

In compliance with Executive Order 12988, the Department issued [DOJ Policy Statement 1200.03](#). This Policy Statement updates Department policies and rules on topics such as leave, conflicts of interest, and use of property, in an effort to facilitate *pro bono* and volunteer services by employees.

Given the significant unmet need for legal and other community services in the nation, the Department encourages and supports efforts by Department employees to provide *pro bono* legal and volunteer services within their communities that are consistent with applicable federal statutes and regulations governing conflicts of

interest and outside activities. Department employees are encouraged to set a voluntary, personal goal of at least 50 hours per year of *pro bono* legal and non-legal volunteer service. *Pro bono* legal work and volunteer services are broadly defined to include many different types of activities, performed without compensation. Examples include providing assistance to persons of limited means or other disadvantaged persons, as well as assistance to charitable, religious, civic, community, governmental, health, and educational organizations. The Department does not seek to restrict the type of *pro bono* or volunteer activities in which employees engage, provided that such activities do not violate any statutory or regulatory restrictions as outlined in the Policy Statement.

All *pro bono* and volunteer service is subject to limitations, including certain prior approval requirements, compliance with all conflict of interest statutes and regulations, and compliance with all local unauthorized practice of law statutes and fee requirements. These and other restrictions on the use of one's official position and use of agency resources are set forth in more detail in the Policy Statement. The Deputy DAEO (the Deputy Director/General Counsel) provides guidance to Program employees regarding compliance with all statutes and regulations. Department employees are encouraged to participate in volunteer and *pro bono* legal opportunities that can be accomplished outside their scheduled working hours. However, *pro bono* legal or volunteer activities may sometimes occur during work hours.

8-6.2 SPEAKING, TEACHING, AND WRITING

8-6.2.1 Restriction on Fees

An employee may not accept a fee for speaking, teaching, or writing that relates to the employee's official duties. 5 C.F.R. § 2635.807. An activity relates to the employee's official duties if:

1. the invitation to speak, teach, or write is extended because of the employee's official position, rather than an expertise based on education or experience;
2. the invitation comes from someone who can be affected by the employee's performance of official duties;
3. it is undertaken as part of the employee's official duties;
4. the information conveyed is non-public; or

5. the subject deals with (i) any matter to which the employee is presently assigned or has been assigned during the previous one-year period; (ii) any ongoing or announced policy, program, or operation of the Department or the Program; or (iii) in the case of a non-career employee above GS-15, e.g., the Director or a United States Trustee, the general subject matter, area, industry, or economic sector primarily affected by the programs and operations of the Program (in addition, employees at this level must have approval to engage in teaching for compensation).

Notwithstanding that the activity would relate to the employee's duties, an employee may accept compensation for teaching a course requiring multiple presentations as part of the curriculum of an institution of higher learning, an elementary or secondary school, or a program sponsored by the federal government or a state or local government. However, employees should seek written approval from the Deputy DAEO prior to accepting a position of this kind. An employee may not use his or her official time or that of another employee to prepare materials.

8-6.2.2 Speaking and Writing Engagements

In order to ensure that competing interests are balanced and that the Program's positions are properly represented, employees must consult with the Office of the General Counsel before giving a speech, participating on a panel, or undertaking a writing engagement. Before accepting an invitation to participate in a speaking engagement, United States Trustees must comply with the following procedures:

1. All speaking invitations that are out-of-region or before national organizations must be cleared with the Deputy Director for Field Operations or his or her designee prior to acceptance. This includes within-region meetings of national organizations, as well as meetings of federal agencies or groups unless they are strictly local in nature. Requests should be in writing (email is acceptable) and should include the name and approximate size of the group to be addressed, and the date, location, and subject of the talk. The request must be submitted as far in advance as possible, and be prior to and separate from the travel and/or training authorization.
2. All other speaking engagements must be reported to the Deputy Director for Field Operations or his or her designee within 30 days after the event. The notification should include the name and approximate size of the group addressed, and the date, location, and subject of the talk.
3. Materials that a speaker proposes to distribute or display in connection

with any out-of-region or national speaking engagement, or that pertain to a current high priority of the Program and are not generally accessible “off the shelf” materials, must be submitted in writing (e-mail is acceptable) to the Deputy DAEO at least 10 business days before the material deadline for the event.

Before accepting an invitation to participate in a speaking engagement, all other Program employees must comply with the following procedures:

1. All speaking invitations that are out-of-region or before national organizations must be cleared in advance with the Deputy Director for Field Operations or his or her designee, through the United States Trustee (or EOUST supervisor) prior to acceptance. This includes within-region meetings of national organizations, as well as meetings of federal agencies or groups unless they are strictly local in nature. Requests should be in writing (email is acceptable) and should include the name and approximate size of the group to be addressed, and the date, location, and subject of the talk. The request must be submitted as far in advance as possible, and be prior to and separate from the travel and/or training authorization.
2. All other speaking invitations must be approved, in advance, by the United States Trustee, through the Assistant United States Trustee (or EOUST supervisor). Requests should include the name and approximate size of the group to be addressed, and the date, location, and subject of the talk.
3. Materials that a speaker proposes to distribute or display in connection with any out-of-region or national speaking engagement, or that pertain to a current high priority of the Program and are not generally accessible “off the shelf” materials, must be submitted in writing (e-mail is acceptable) to the Deputy DAEO at least 10 business days before the material deadline for the event.

8-6.2.3 Use of Title

An employee may not use his or her official title or position when engaged in outside speaking, teaching, or writing, or to promote a book, seminar, or course. 5 C.F.R. § 2635.807(b).

An employee may include or permit the inclusion of his or her title or position as one of several biographical details when such information is given to identify him or her in connection with his or her teaching, speaking, or writing, provided that his or her title or position is given no more prominence than other significant biographical details.

An employee may use his/her title or position in a scholarly article published in a professional journal, provided that on the page where the title or position appears there is a reasonably prominent disclaimer satisfactory to the Deputy DAEO stating that the views expressed do not necessarily represent the views of the agency or the United States. For example: "All views expressed in this article are those of the author and do not necessarily represent the views of and should not be attributed to the United States Trustee Program."

8.6.2.4 Content of Written Statements and Articles

The subject matter of any written statement or article should be confined to an employee's area of competence. Areas of sensitivity, while difficult to avoid on occasion, should be confronted with the overall interests of the Program as the primary goal. Specifically, employees should be cognizant of matters concerning national policy. They should be aware of the status of a particular policy in terms of whether it is subject to ongoing internal deliberation or litigation, or whether a final determination has been made. The EOUST should be consulted if there is any question that a particular subject matter raises these concerns.

8-6.3 OUTSIDE EMPLOYMENT AND ACTIVITIES

8-6.3.1 General Rule

No employee may engage in outside employment or any other outside activity that conflicts with the employee's official duties. Outside employment means any form of employment, business relationship, or activity involving the provision of personal services, whether or not for compensation, other than the discharge of official duties. It includes services as a lawyer, officer, director, trustee, employee, agent, consultant, contractor, or general partner. An activity conflicts with an employee's duties if it is prohibited by statute or regulation, or would require disqualification from matters central to the performance of the employee's official duties. 5 C.F.R. § 2635.802.

8-6.3.2 Prohibited

Unless the Deputy Attorney General issues a waiver based on compelling reasons, no employee may engage in outside employment that involves:

1. the practice of law, unless it is uncompensated and in the nature of community service or unless it is on behalf of himself or herself or his or her parents, spouse, or minor children;
2. any criminal or habeas corpus matter, whether federal, state, or local; or
3. litigation, investigation, grants, or other matters in which the Department is or represents a party, witness, litigant, investigator, or grant maker. 5 C.F.R. § 3801.106.

An employee may not represent anyone else before a court or agency of the federal government or accept compensation for someone else's representation on a matter in which the United States is a party or has an interest. 18 U.S.C. §§ 203 and 205. This means, for example, that in their private capacity, employees cannot contact the government on behalf of a friend whose federal benefits have been reduced.

There are some limited exceptions, however. Employees can testify under oath; they can represent themselves, their parents, spouse, and children, and anyone for whom they act in a fiduciary capacity; they can represent another employee, without compensation, in an administrative proceeding if there is no conflict with official duties; and they can represent a non-profit organization composed of government employees and spouses, e.g., a day-care facility, but not on a claim against the United States.

8-6.3.3 Approval Needed

An employee must obtain approval from the Director before engaging in outside employment, not otherwise prohibited, that involves:

1. the practice of law; or
2. a subject matter, policy, or program that is in the Program's area of responsibility (5 C.F.R. § 3801.106).

The employee should send a written request providing pertinent information to the Deputy DAEO for consideration by the Director.

In addition, employees should seek prior approval from the Deputy DAEO before undertaking a teaching or lecturing assignment or before serving in a leadership position in a bar association. The Deputy DAEO should also be consulted on the approval requirements to provide *pro bono* and volunteer services. Employees

should submit these types of ethics inquiries to the Deputy DAEO through the Associate General Counsel for General and Administrative Law Practice within the Office of the General Counsel.

8-6.3.4 Participation in Outside Volunteer Organizations and Activities

8-6.3.4.1 General

Department employees are encouraged to participate in outside volunteer and professional activities, including *pro bono* and bar activities. To ensure that these activities comply with Department rules, guidance to employees has been provided on what is and is not permitted when participating in outside activities so that such activities do not conflict with an employee's primary responsibilities to the Department. Although the standards for participation in *pro bono* activities are the same as for other outside activities, the Department has issued more specific guidance for *pro bono* legal services and similar volunteer work, which is discussed in Manual 8-6.1.

8-6.3.4.2 Outside Activities that are not Part of Official Duties

Most employees participate in outside organizations in their personal capacities as a matter of personal choice, and generally no approval is necessary. They will have made a personal choice to undertake the activity rather than having been assigned to perform the activity by a supervisor as part of their official duties. In these individual capacity cases, the employee will be subject to the following rules:

1. An employee is not required to obtain approval to participate as a **member only** of an outside organization, including bar associations or other professional associations, or on a committee of such an organization. Advance approval is not required regardless of whether the organization's work is related to the work of the employee's component. However, if the activity will involve service as an officer, director, fiduciary, committee chair, or employee of the organization, and the work of the organization is related to the work of the employee's component, then prior approval must be obtained from the employee's component head.
2. Ordinarily, personal activities on behalf of outside organizations should not be conducted at the expense of the government in terms of time or money. The Department does generally permit a limited use of its resources for outside activities so long as the cost to the Government is negligible. These resources may not be used in a manner that suggests that

the Department endorses the activity, nor may they be used for outside activities in a way that interferes with official business. In addition, employees may not task subordinate staff to assist them in their outside activities. See 5 C.F.R. § 2635.705(b). Managers may continue to authorize administrative time for outside activities where there is a benefit to the Department, consistent with the rules applicable to administrative time.

3. The Department does not control or direct employees in outside activities undertaken in an individual capacity. Employees should take care to ensure that their actions and positions taken while participating in these activities are recognized as their own, and not those of the Department.
4. All employees must be aware of the prohibitions of 18 U.S.C. § 205, which prohibits executive branch employees from representing an outside organization to any department or agency of the U.S. Government. Organizations whose membership is composed of a majority of federal employees or their family members are not subject to this prohibition. However, even in the case of these organizations, an employee may not represent the organization if it would conflict with the employee's duties to the Department.

8-6.3.4.3 Service with an Outside Organization that is Assigned as an Official Duty

Occasionally, when the work of an outside organization is of great interest to the Department, the Deputy Attorney General may determine that an employee should serve in a position with the organization as part of his or her official duties. These duties will not differ from other work performed under the direction of an appropriate supervisor and at Department expense. However, this will not be a common occurrence because the Department generally performs its work directly, rather than by participating in outside entities. Participation in an outside organization as part of official duties requires advance approval from the Deputy Attorney General and adherence to the guidelines set forth in a Department [memorandum](#) dated May 19, 2000.

8-6.4 **FUND-RAISING - NON-POLITICAL**

Fund-raising is defined as raising funds for a non-profit organization, other than a political one. It includes soliciting funds, selling items, and participating in the conduct of a fund-raising event. The definition does not include the activity of collecting non-monetary items by employees.

Employees may not engage in fund-raising in their official capacity unless authorized by statute, executive order, or regulation or an agency determination. In the Department, all official fund-raising is governed by Executive Order 12353, which established the Combined Federal Campaign (CFC). The regulations implementing the order state: “The CFC is the only authorized charitable fund-raising drive in the federal workplace. No other fund-raising drive may be conducted in the federal workplace without the express written permission of the Director [of the Office of Personnel Management].” 5 C.F.R. § 950.102; 5 C.F.R. § 2635.808.

Employees may engage in fund-raising in their personal capacity, but donations may not be personally solicited from subordinates or from prohibited sources. Furthermore, official titles may not be used to further a fund-raising effort. There are two exceptions:

1. media and mass mailings that are not targeted to subordinates or prohibited sources; and
2. a speech related to the employee’s official duties at a fund-raiser, provided the event is appropriate for the dissemination of official information and the employee does not request donations.

8-6.5 PURCHASE OF GOVERNMENT PROPERTY

Department employees may not purchase or use property forfeited to and offered for sale by the Department without a special waiver from the Director. 5 C.F.R. § 3801.104.

8-6.6 MISUSE OF POSITION

8-6.6.1 General

An employee shall not use public office for private gain or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a non-governmental capacity. There should be no use of position or title to coerce someone, including a subordinate, to provide benefits to any of the above. 5 C.F.R. § 2635 subpart G.

8-6.6.2 Letters of Recommendation

An employee may use his or her official title in response to a request for an employment recommendation or character reference for an individual with whom the employee has dealt in the course of federal employment or who is being recommended for federal employment. 5 C.F.R. § 2635.702(b).

An employee may not write a letter of recommendation for a government contractor on his or her official letterhead, or using his or her official title. Only the contracting officer would have the authority to write a formal letter addressing the performance under the contract.

8-6.6.3 Endorsements

An employee may not use his or her government authority, position, or title to endorse any product, service, or enterprise. 5 C.F.R. § 2635.702(c).

8-6.6.4 Use of Nonpublic Information

Information is nonpublic when the employee knows that it has not been made available to the general public, is treated as confidential by the Program, or is exempt or protected from disclosure by statute, executive order, or regulation. An employee may not engage in financial transactions using nonpublic information or allow the improper use of nonpublic information to further his or her own private interest or that of another. 5 C.F.R. § 2635.703. See also 18 U.S.C. § 798 and 50 U.S.C. § 783(b) (prohibition against disclosure of classified information); 18 U.S.C. § 1905 (prohibition against disclosure of proprietary or confidential information).

No current or former employee or anyone acting on behalf of the United States shall knowingly disclose any contractor bid or source selection information before the award of the contract to which the information relates. 41 U.S.C. § 423.

8-6.6.5 Use of Government Property

Government property can only be used for purposes related to the performance of official duties. 5 C.F.R. § 2635.704. The Department has authorized the personal use of certain property such as office equipment and library facilities as long as the cost to the government is negligible and there is no use of official time. 28 C.F.R. § 45.4. See also 31 U.S.C. § 1344 (misuse of a government vehicle); 18 U.S.C. § 1719 (misuse of franking privileges); 18 U.S.C. § 2071 (mutilating or

destroying a public record); 18 U.S.C. §§ 641, 643, and 654 (embezzlement or conversion of government money or property).

8-6.6.6 Use of Official Time

Official time shall only be used to perform official duties. Employees may not ask subordinates to use official time for anything other than the performance of official duties. 5 C.F.R. § 2635.705.

8-6.7 OFF-DUTY CONDUCT

An employee must refrain from off-duty conduct that may have a negative impact on his/her ability to perform his/her job or detract from the Department's mission. Examples of such off-duty conduct include sexual misconduct, racist or sexist remarks, falsification of documents, and failure to pay just debts.

8-6.8 GIFTS

This section discusses the rules and laws governing the acceptance of gifts from outside sources and the acceptance and giving of gifts by and between employees within the Program. For the rules addressing the acceptance of gifts by political appointees, imposed by Executive Order 13490, see Manual 8-5.2 above.

8-6.8.1 From Outside Sources

8-6.8.1.1 General

An employee may not, directly or indirectly, solicit or accept a gift (1) from a prohibited source or (2) that is given because of the employee's official position. 5 U.S.C. § 7353; 5 C.F.R. § 2635 subpart B; 18 U.S.C. § 201 (bribery); 18 U.S.C. § 209 (supplementation of federal salary); 31 U.S.C. § 1353 and 41 C.F.R. § 304 (travel costs); 5 U.S.C. § 4111 (501(c)(3) organizations); and 5 U.S.C. § 7342 (foreign government).

8-6.8.1.2 Definitions

A "prohibited source" is anyone who is seeking official action by the Program; anyone who does or seeks to do business with the Program; anyone who conducts activities regulated by the Program; anyone who has

interests that may be substantially affected by the performance or nonperformance of an employee's official duties; and any organization, a majority of whose members are described above. Prohibited sources may include, for example, an association of bankruptcy attorneys or insolvency professionals, a trustee organization, and bankruptcy software vendors. 5 C.F.R. § 2635.203.

A "gift" includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services, as well as gifts of training, transportation, local travel, lodging, and meals. Gifts do not include modest items of food or drink; loans obtained from financial institutions on commercially available terms; discounts offered to a broad class; rewards/prizes in contests or random drawings; items of little intrinsic value; or plaques, certificates, or trophies that are intended solely for presentation. 5 C.F.R. § 2635.203.

8-6.8.1.3 Exceptions

Certain gifts may be accepted, unless they are coerced or their timing or frequency raises an appearance question. 5 C.F.R. § 2635.204. They include:

1. Items of \$20 or less (non-cash and non-investment), with a \$50 aggregate limit per calendar year;
2. Gifts based solely on personal relationships;
3. Gifts based on outside business relationships to include those resulting from a spouse's business and trips paid for by a prospective employer;
4. Government-wide discounts;
5. Awards, other than cash, for meritorious public service worth less than \$200. Awards valued above this amount or in cash may be accepted with written approval;
6. Free attendance at a program or event when an employee is assigned to speak or participate on a panel or otherwise present information on behalf of the agency. This may include the waiver of a conference fee or the provision of food, refreshments, entertainment, or instructional material provided to all attendees

limited to the days on which the presentation is being made. It does not include, however, travel-related expenses;

7. Free attendance, including food, refreshment, and instructional material at a widely attended gathering, if the agency designee makes a written finding that the agency's interest in the employee's attendance outweighs concern of improper influence in the performance of official duties. This does not include travel-related expenses. Note: An employee must attend on his/her own time unless administrative leave is granted;
8. Social invitations from persons other than prohibited sources if no fee is charged to anyone. Food, refreshments, and entertainment are acceptable; however, no travel or lodging may be accepted;
9. Gifts authorized by supplemental agency regulation or statute;
10. Gifts from foreign governments, but not from foreign business people; and
11. Travel expenses:
 - a. from a § 501(c)(3) organization for free attendance, course materials, transportation, lodging, food, etc., incident to training or meetings;
 - b. from a foreign government when overseas; or
 - c. from a non-federal source, but only in accordance with 31 U.S.C. § 1353 (41 C.F.R. § 304). Note, however, that the Program permits reimbursement of travel from non-federal sources only in limited circumstances.

8-6.8.1.4 Remedial Action

If a prohibited gift is received, the employee must return it or pay the donor the total market value of the item. The agency may authorize the disposition or return of a gift at government expense. Employees may use penalty mail to forward reimbursements. There is one exception: perishable gifts can be donated to charity, destroyed, or shared with the entire office.

8-6.8.2 Gifts Between Employees

Employees are prohibited from giving, soliciting for, or donating a gift to an official superior. Gifts may be accepted from other employees making less money if there is a personal relationship and if there is no official superior/subordinate relationship. 5 U.S.C. § 7351; 5 C.F.R. § 2635 subpart C; 28 C.F.R. § 45.735-14(e).

There are two general exceptions to this rule. On an occasional basis, including an occasion on which gifts are traditionally given or exchanged, e.g., birthdays and Christmas, the following may be given to an official superior: items valued at less than \$10; food and refreshments to be shared in the office among several employees; personal hospitality provided at a residence; and items given in connection with the hospitality.

In addition, on a special, infrequent occasion such as marriage, illness, or birth, or on an occasion that terminates the work relationship, such as retirement or transfer (but not promotion), an employee may solicit contributions of nominal amounts from fellow employees for a gift to an official superior or for shared refreshments and make a voluntary contribution of a nominal amount. Solicitations may suggest, but may not require, a specific dollar amount.

8-6.8.3 Gifts from Foreign Governments

If an employee or employee's spouse or dependent receives a gift or decoration valued at \$50 or more from a foreign government, it must be reported to the Resources Division of the EOUST.

8-6.9 DEPARTMENT'S SOCIAL MEDIA POLICY

Guidance on the Department's Social Media Policy was distributed March 24, 2014 by Deputy Attorney General, James M. Cole. All Department employees are responsible for knowing and understanding the policy. This policy is not intended to discourage or unduly limit employees' personal expression or online activities. However, Department employees are required to adhere to certain government-wide standards of conduct and rules of professional responsibility conduct that apply to online communications at all times, regardless of whether they are at work, outside the office, or using government equipment. These standards of conduct include: (1) protecting confidential, privileged, classified, privacy-protected and/or sensitive Department information; (2) restrictions on publicly releasing comments or information that may reasonably be expected to influence the outcome of a pending or future trial; (3) refraining from making

false or reckless statements about a judge's qualifications or integrity; and (4) prohibiting comments that can be perceived as showing prejudice based on race, gender, sexual orientation or any other protected basis. Additionally, Department employees are subject to the Standards of Ethical Conduct, which can impact social media use. Department attorneys are also subject to applicable rules of professional responsibility. In addition, Department employees should recognize that attempts to post, comment, or share information anonymously are often unsuccessful. Finally, employees using Department equipment are subject to Department guidelines restricting the use of Department computers.

To assist employees in complying with the Department's Social Media Policy, it is recommended that employees ask themselves at least two questions before using social media to communicate about matters affecting the Department. First, an employee should ask "is there a risk that I am disclosing confidential or non-public information?" Second, the employee should ask "might my use of social media adversely affect the Department's mission?" By exercising sound judgment, employees can ensure they meet the high standards established by the Department.

8-6.10 SEEKING AND NEGOTIATING FOR EMPLOYMENT

8-6.10.1 Rule for Seeking Employment

Employees must disqualify themselves from participating in a matter when they are seeking employment with persons whose financial interests would be affected by the performance or non-performance of the employee's official duties. 5 C.F.R. § 2635 subpart F.

A person is seeking employment when he or she:

1. engages in any communications or discussions regarding employment possibilities with prospective employers, which includes sending a resume;
2. receives an unsolicited communication regarding employment and gives a response other than an immediate rejection. A response that defers discussions to a foreseeable date in the future does not constitute a rejection.

An employee is no longer seeking employment when either side rejects the other and all discussions regarding employment have terminated, or when two months have elapsed since the employee sent an unsolicited resume and there has been no response or indication of interest expressed.

8-6.10.2 Remedial Action when Seeking Employment

Disqualification is accomplished by not participating in the matter. Written disqualification is not necessary, but an employee may want to create a record by providing written notice to his or her supervisor or other appropriate official.

A written waiver can be sought from the Deputy DAEO in the same manner as a waiver for conflicting financial interests. See Manual 8-2.2 of this volume.

8-6.10.3 Rule for Negotiating for Employment

Employees are statutorily prohibited from participating in particular matters when they affect the financial interests of an organization with which they are negotiating for future employment. 18 U.S.C. § 208.

The mass mailing of unsolicited resumes is generally viewed as seeking employment rather than negotiating for employment. There are many other situations, however, where the line between seeking employment and negotiating for employment will be far more difficult to draw. If approached about a job by someone with whom the employee has official business, it is best that the employee do one of two things: state unequivocally that he or she is not interested or, if interested, immediately begin disqualification procedures. Disqualification is generally the only remedy in an employment negotiating situation, but if a waiver is sought, it would be governed by the procedures applicable to conflicting financial interests.

CHAPTER 8-7 BAR MEMBERSHIP

8-7.1 GENERAL

Every United States Trustee, Assistant United States Trustee, and Trial Attorney must be a member and maintain an “active” membership in at least one bar. The position of the Department is that its attorneys may appear before any federal court, without being admitted to the bar for the state in which the court lies. See 28 U.S.C. §§ 501, 503, 510, 515, 516, 517, 518.

8-7.2 DEPARTMENT’S POLICY ON BAR MEMBERSHIP

Department attorneys (including, but not limited to, all individuals hired into the 905 (General Attorney) or 1222 (Patent Attorney) occupational series, regardless of the title or level of the position, the pay plan, or the nature of the legal work

required by the position) are required to maintain “active” membership in at least one bar. Any active status for which an attorney qualifies in his or her licensing jurisdiction will satisfy the requirement. Failure to comply with the Department’s bar membership policy will result in a referral to the Office of Professional Responsibility. In addition, upon learning of an attorney’s failure to comply with the Department’s bar membership policy, the Department may prohibit the attorney from functioning in that capacity and from receiving compensation for such services, at least until the attorney is in compliance with the policy.

CHAPTER 8-8: TRAINING REQUIREMENTS

8-8.1 ETHICS ORIENTATION OF NEW EMPLOYEES

All employees shall be provided with a minimum of one hour of official duty time to “review” the following materials within 90 days of entering on duty:

1. A copy or summary of Part I of Executive Order 12674, as amended by Executive Order 12731, the Standards of Ethical Conduct (5 C.F.R. § 2635), and the supplemental regulations of the Department (5 C.F.R. § 3801). If summary materials are used, copies of the complete text of section 2635 and the supplemental agency regulations must be retained and be accessible in the employee’s office area.
2. Names, titles, office addresses, and telephone numbers of the DAEO and other agency ethics officials available to answer questions regarding ethical responsibilities. 5 C.F.R. § 2638.703.

If a verbal ethics training session is provided to employees during official duty time, the time set aside for individual review may be reduced accordingly. Each United States Trustee is responsible for establishing a procedure that timely and systematically notifies all new entrants in the region of the 90-day ethics orientation requirement and that ensures that all new entrants comply. No written certification is required.

8-8.2 ANNUAL ETHICS TRAINING

Employees who file both public and confidential financial disclosures are required to meet certain training requirements, although the training requirements for each category of filer are different. The annual training requirements for both public and confidential filers are discussed below

8-8.2.1

Public Filers

All those who file public financial disclosure reports (SF 278s) must receive a formal verbal ethics briefing every year.

The Deputy DAEO will establish the content of the annual briefing and will notify all United States Trustees and Administrative Officers of the prescribed format. Any deviation from the prescribed format must receive prior written approval from the Deputy DAEO.

Course content must include as a minimum:

1. a reminder of employees' responsibilities under Executive Order 12674, the Standards of Ethical Conduct, and the supplemental agency regulations. Examples that relate specifically to agency programs and operations and any ethics-related, agency-specific statute or regulations;
2. a reminder of an employee's responsibilities under the conflict of interest statutes; and
3. the names, titles, office addresses, and telephone numbers of the DAEO and other agency ethics officials available to answer questions regarding an employee's ethical responsibilities.

The briefing must be presented verbally or by recorded means, and a qualified person must be accessible during and immediately following the presentation. If the Deputy DAEO makes a written determination that circumstances render it impractical to provide training to a particular employee or group of employees in accordance with the foregoing, the briefing may be presented by means of written materials. This exception shall be construed narrowly, and may not be based on administrative inconvenience or cost, standing alone. 5 C.F.R. § 2638.704.

Each United States Trustee must furnish a report to the Deputy DAEO after the close of each calendar year certifying that all designated employees have received their annual ethics training.

8-8.2.2 Confidential Filers

Those who file confidential financial disclosure reports are subject to slightly different annual training requirements. Confidential filers can be given a written ethics briefing, instead of a verbal presentation, in up to two out of every three years. Employees must receive sufficient official duty time to review the written materials provided. Confidential filers must receive formal verbal training at least once every three years, but unlike the annual briefing for public filers, a qualified individual does not need to be present during and immediately following the verbal presentation. Employees must be provided a minimum of one hour of official duty time for the verbal briefing. 5 C.F.R. § 2638.705.

Each United States Trustee must furnish a report to the Deputy DAEO certifying that all designated employees have received their annual ethics training.

CHAPTER 8-9: POST-EMPLOYMENT ISSUES

8-9.1 PERMANENT BAN - ALL EMPLOYEES

A former employee is permanently prohibited from representing someone else before any department, agency, court, or court-martial of the United States on a particular matter involving specific parties in which the employee participated personally and substantially while working for the government and in which the United States is a party or has a direct and substantial interest. 5 C.F.R. § 2641.201.

Particular matters involving specific parties do not necessarily require the presence of an adversarial relationship. See also Rule 1.11 of the American Bar Association Model Rules of Professional Conduct. The Program treats every bankruptcy case as a particular matter involving specific parties, e.g., debtor, creditors' committee, trustee, etc. Matters of general applicability, such as legislative proposals or policy statements, are covered only in those rare occasions when a particular rule or proposal would cover only a handful of people.

Behind-the-scenes assistance is not prohibited under the government rules, but most attorneys are prohibited by their State Bar rules from representing a client in any capacity with regard to a matter in which they participated personally and substantially with the government. Furthermore, the former employee's disqualification is imputed to the whole law firm unless a screening mechanism is put in place and approved by the Director. See Rule 1.11 of the American Bar Association Model Rules of Professional Conduct. Many jurisdictions have provisions that differ from the Model Rule. Attorneys are bound by rules of the bar of which they are a member and should check the rules that apply to them.

8-9.2 TWO-YEAR OFFICIAL RESPONSIBILITY BAN - ALL EMPLOYEES

For two years, a former employee is prohibited from representing someone else before the government on a particular matter involving specific parties that the employee knows was pending under his or her official responsibility during the last year of his or her government service and in which the United States is a party or has a substantial interest. 18 U.S.C. § 207(a)(2).

Official responsibility is defined in 18 U.S.C. § 202(b) as “the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.” The term should, therefore, be broadly construed. Thus, any supervisor having responsibility for the activities of a subordinate employee who actually participates in a particular matter has official responsibility for that matter.

Recusal will not remove the matter from one's official responsibility. Section 207(a)(2) does not prohibit former employees from advising and assisting behind the scenes with respect to a matter that was within their official responsibility. Furthermore, if the employee did not personally participate in the matter, ABA Model Rule 1.11 would not require a screening mechanism or disqualify the former employee's law firm from representation.

8-9.3 ONE-YEAR TRADE AND TREATY NEGOTIATIONS BAN - ALL EMPLOYEES

For one year, a former employee is prohibited from representing, aiding, or advising on the basis of confidential information on a trade or treaty negotiation in which he or she participated personally and substantially within one year of leaving the government. 18 U.S.C. § 207(b).

8-9.4 ONE-YEAR COOLING OFF BAN - SENIOR OFFICIALS

For one year, former employees whose basic rate of pay is equal to or greater than Level V of the Executive Schedule are prohibited from representing someone else before their former agency with the intent to influence on a matter that is pending before the agency. 18 U.S.C. § 207(c). The 21 United States Trustee positions have been excepted from the one-year ban by the Director, Office of Government Ethics. See 5 C.F.R. § 2641, Appendix A. For purposes of this rule, however, the EOUST is not considered separate from any United States Trustee's office, but each region of a United States Trustee is considered a separate component from the other regions.

8-9.5 ONE-YEAR LOBBYING BAN - CABINET OFFICIALS

For one year, a former Cabinet level official is prohibited from lobbying any other Executive Level official in the executive branch. 18 U.S.C. § 207(d).

8-9.6 ONE-YEAR BAN - REPRESENTING FOREIGN ENTITIES - SENIOR OFFICIALS

For one year, an official subject to 18 U.S.C. § 207(c) and (d) is prohibited from representing, aiding, or advising a foreign entity with the intent to influence a federal employee. 18 U.S.C. § 207(f).